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2	2208 West Second Avenue Spokane, WA 99201-5417			
3	(509) 747-0101			
4	STEPHEN L. NORDSTROM Nordstrom & Nees, P.S.			
5 6	323 South Pines Road Spokane, WA 99206 (509) 924-9800	e: **		
7	Attorneys for Plaintiff			
8	UNITED STATES DISTRICT COURT FOR THE			
9	EASTERN DISTRICT	OF WASHINGTON		
10	THOMAS A. WAITE,	No. CV-05-399-EFS		
11	Plaintiff,	DECLARATION OF STEPHEN L.		
12	VS.	NORDSTROM IN SUPPORT OF		
		PLAINTIFF'S MOTION FOR		
13	THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS d/b/a	PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE		
13 14	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS	PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE DEFENSES		
	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a	JUDGMENT RE: AFFIRMATIVE		
14	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST	JUDGMENT RE: AFFIRMATIVE		
14 15	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM;	JUDGMENT RE: AFFIRMATIVE		
14 15 16 17	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah	JUDGMENT RE: AFFIRMATIVE		
14 15 16	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM;	JUDGMENT RE: AFFIRMATIVE		
14 15 16 17 18	LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and STEVEN D. BRODHEAD,  Defendants.	JUDGMENT RE: AFFIRMATIVE		

- f
- I am co-counsel for plaintiff in the above-referenced matter. I am competent to testify in this matter and I make this affidavit of my own personal knowledge and in support of plaintiff's Motion for Partial Summary Judgment Re: Affirmative Defenses.

EYMANN ALLISON HUNTER JONES P.S.

DECLARATION OF STEPHEN L. NORDSTROM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE DEFENSES - 1 (dec of sln in sup of psj mot re affirmative defenses.wpd)

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2208 WEST SECOND AVENUE • SPOKANE, WA 99201-5417 TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

- 2. Attached hereto and incorporated by reference herein as Exhibit "A" is a true and correct copy of defendant LDS Church's response to plaintiff's Interrogatory No. 11.
- 3. Attached hereto and incorporated by reference herein as Exhibit "B" are true and correct copies of pages 1, 39-40 and 98 and Deposition Exhibit 3 ("Driving Contract") from the transcript of the deposition of Thomas A. Waite taken on October 17, 2006 in the above-referenced matter.
- 4. Attached hereto and incorporated by reference herein as Exhibit "C" are true and correct copies of pages 1 and 43-45 and Deposition Exhibit 1 ("Driving Contract") from the transcript of the deposition of Donald C. Fossum taken on November 9, 2006 in the above-referenced matter.
- 5. Attached hereto and incorporated by reference herein as Exhibit "D" are true and correct copies of pages 1 and 2 of the Declaration of James T. Ross signed on November 27, 2006 in the above-referenced matter.
- 6. Attached hereto and incorporated by reference herein as Exhibit "E" are true and correct copies of pages 1 and 12-13 from the transcript of the deposition of Mark Tyler Ryan taken on November 10, 2006 in the above-referenced matter.
- 7. Attached hereto and incorporated by reference herein as Exhibit "F" is a proposed Order Granting Plaintiff's Motion for Partial Summary Judgment Re: Affirmative Defenses.

DATED this 30th day of January, 2007 at Spokane, Washington.

s/Stephen L. Nordstrom
STEPHEN L. NORDSTROM

EYMANN ALLISON HUNTER JONES P.S.

1	CERTIFICATE OF SERVICE
2 3	I, RICHARD C. EYMANN, hereby certify that on the 30th day of January, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following participants:
4 5	Brian T. Rekofke
6	Witherspoon Kelley Davenport & Toole 1100 U.S. Bank Building 422 W. Riverside Avenue Spokane, WA 99201
7   8   9	Andrew C. Smythe Paine Hamblen Coffin Brooke & Miller 717 W. Sprague Avenue, Suite 1200 Spokane, WA 99201
.0	
1	s/Richard C. Eymann RICHARD C. EYMANN
2	RICHARD C. ETWIANN
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26	EYMANN ALLISON HUNTER JONES P.S.
27 I	DECLARATION OF STEPHEN L. NORDSTROM IN

SUPPORT OF MOTION FOR PARTIAL SUMMARY

2208 WEST SECOND AVENUE SPOKANE, WA 99201-5417 TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

# Exhibit "A"

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## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

YMANN, ALLISON FENNESSY HUNTER & JONES P.S

THOMAS A. WAITE,

VS.

Plaintiff.

THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and STEVEN D. BRODHEAD,

Defendants.

No. CV-05-399-EFS

**DEFENDANTS'** PLAINTIFF'S FIRST SET AND REQUEST FOR PRODUCTION

#### GENERAL OBJECTIONS

Defendants object to the Interrogatories and Document Requests to the extent they purport to impose obligations upon Defendants that are in addition to or inconsistent with the requirements of the Federal Rules of Civil Procedure. Defendants further object to the Interrogatories and Document Requests to the extent they seek information protected by the attorney-client privilege, and/or the attorney work-product protection. Defendants will not voluntarily produce any privileged or protected information, and reserves the right to recover any such information produced inadvertently.

Defendants object to Plaintiff's Interrogatories and Document Requests as unduly burdensome to the extent they requests it to identify documents or information not in its possession, custody, or control.

Defendants object to the Interrogatories and Document Requests to the extent they request information already in Plaintiff's possession or that may be

 INTERROGATORY NO.10: Had defendant LDS Church's agent Donald C. Fossum, within 24 hours before the incident complained of in the plaintiff's Complaint, ingested any alcohol, medicine or other drug? If so, describe fully the agent, the amount thereof, and when and where said alcohol, drug or medicine was consumed or ingested.

ANSWER: Defendants object to this interrogatory as compound, overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Further, the interrogatory assumes facts which are not in evidence. Subject to and without waiving these objections: No.

INTERROGATORY NO. 11: If defendant LDS Church claims that the negligence or conduct of any other third person(s) contributed to the incident complained of or the damages sought by plaintiff in the Complaint, please state their name(s), address(es) as well as each and every fact which form the basis for your claim that said person(s) contributed to the incident and/or the injuries sustained by plaintiff Thomas Waite.

ANSWER: Defendants object to this interrogatory as compound and overly broad. Further, discovery is ongoing, Defendants have not had the opportunity to determine or identify each and every person who may have contributed to the incident. Subject to and without waiving these objections: At this time, however, Defendants believe that the negligence and conduct of Steven Brodhead and Thomas Waite contributed to the accident and/or damages complained of. Specifically, Thomas Waite failed to follow church and mission policies when he breached his agreement not to ride in a motor vehicle without a seatbelt. Discovery is ongoing and these Defendants reserve the right to supplement this answer as discovery continues.

INTERROGATORY NO. 12: If defendant LDS Church claims that the negligence or conduct of plaintiff Thomas Waite caused or contributed to the incident complained of or the damages sought by plaintiff in the Complaint,

# Exhibit "B"

1	
2	UNITED STATES DISTRICT COURT
3	FOR THE EASTERN DISTRICT OF WASHINGTON
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5	THOMAS A. WAITE,
6	Plaintiff,
7	vs. No. CV-05-399-EFS
8	THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS d/b/a/
9	CORPORATION OF THE PRESIDING BISHOP OF THE CHURCE OF
10	JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation,
11	d/b/a/ CORPORATION OF THE PRESIDENT OF THE CHURCH OF
12	JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation,
13	et al.,
14	Defendants.
15	
16	
17	DEPOSITION OF THOMAS A. WAITE
18	Taken on Behalf of the Defendants
19	Tuesday, October 17, 2006
20	DEPOSITION OF THOMAS A. WAITE, taken on behalf of
21	the Defendants, at 1500 South Raymond Avenue, Fullerton
22	California, commencing at 9:18 A.M. on Tuesday, October
23	17, 2006, before PATRICIA L. HUBBARD, CSR #3400, a
24	Certified Shorthand Reporter in and for the State of
25	California, pursuant to Notice.

Page 37  1 did you go to school every day or were you — or or did you have home studies? Or do you recall how that worked?  A. I don't recall how that worked.  Q. Well, let me ask you this. Did you adways, when you were — aside from the La Sierra High School experience, is it your recollection at that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attend classes?  Q. Okay. And do you recall when that was?  A. I can't say for certain — Q. Was it — Q. Was it — A. I can't say for certain — Q. Was it — Was it home schooling intrough Fullerton or in conjunction with Fullerton, or was it home was on incompletely of Fullerton?  A. A. My morn and dad set that up. I wasn't really aware of how it all worked. Q. Okay. And how did his — were your  Page 38  parents teaching you at home or was — how was that program set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home? A. I can't remember who didn's actually physically attend at Fullerton High School but were undergoing the education process at home? A. I can't remember refore creatin how that was conducted.  Q. Okay. I think you were like me. A. O. When all was said and down, how were word with about the accident that occurred in August of 2003 in Spokane which brings us here today. The process of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of was took and the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection of what took place on the date of the accident? A. I have no recollection? A. I have no recollection of what took place an		- Company of the Comp		
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did you have home studies? Or do you recall how that whorked?  A. I don't recall how that worked. Q. Well, let me ask you this. Did you always, when you were — saide from the La Sierra High School experience, is it your recollection that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attend classes?  A. I think there was a brief period where before going to La Sierra we tried to do home schooling. Q. Okay. And do you recall when that was: Q. Okay. And do you recall when that was? A. — when that was. Q. Okay. Was it through — was it — was it more schooling fittong frough Fullerton or in conjunction with Fullerton, or was it home schooling just done independently of Fullerton? A. My mom and dad set that up. I wasn't really aware of how it all worked. Dear the physically attend at Fullerton High School but were undergoing the education process at home? A. I can't remember for certain how that was conducted. Q. Okay. And how did this — were your  Page 38  parents teaching you at home or was — how was that programs set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home? A. I can't remember for certain how that was conducted. Q. Okay. I think you were like me. You didn't exactly excel in math? A. Yeah. Q. Okay. Let me ask you a little bif about the accident that occurred in August of 2003 in Spokane which brings us here today. They were pretty good. Q. Okay. Littlink you were like me. You didn't exactly excel in math? A. Yeah. I mere remover that at all. Q. Okay. Do you have any recollection of the accident? A. I have no recollection of what took pleve on the date of the accident. A. I have no recollection of what took pleve on the date of the accident. A. I have no recollection of what took pleve on the date of the accident. A. I have no recollection of what took pleve on the date of the accident. A. I have no recollection of what took pleve on the date of the accident. A. I have no recollec	1	did vou go to school every day or were you	1	
1 A Loth recall how that worked. 2 A Loth recall how that worked. 3 D. Well, let me ask you this. Did you always, when you were — aside from the La Sierra High School experience, is it your recollection that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attend classes? 3 A. I think there was a brief period where before going to La Sierra we tried to do labome schooling. 4 Q. Okay. And do you recall when that was? 4 Q. Okay and do you recall when that was? 5 Q. Okay was it frough — was it — was it home schooling fitrough Fullerton or in conjunction with Fullerton, or was it home schooling list done independently of Fullerton? 2 Schooling just done independently of Fullerton? 3 Page 38 4 Page 38 5 Page 38 6 Page 38 7 Page 40 7 A N. No. MR. NORDSTROM: What was the date you mentioned? I missed that. 9 A. Veah. I don't remember that at all. 9 C. Okay. Do you have any recollection of the accident? 10 When did you start your — your mission in Spokane the first go-around? 11 Well, when did you start your — your mission in Spokane the first go-around? 12 When did you attrive in Spokane as a new missionary training center in the standard of the properties of the missionary training center in the t		did voll have home studies? Or do you recall how	2	
4 A. I don't recall how that worked. Q. Well, let me ask you this. Did you always, when you were — aside from the La Sierra High School experience, is it your recollection that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attend classes?  11 A. I think there was a brief period where before going to La Sierra we tried to do home schooling.  12 Wase it— 13 Q. Okay. And do you recall when that was?  14 A. I can't say for certain — Q. Was it— 15 A when that was. Q. O. Ckay. Was it through — was it— 16 A. I can't say for certain — Q. Was it— 17 Q. Was it— 18 A when that was. Q. O. Ckay. Was it through — was it home schooling in through Fullerton or in conjunction with Fullerton, or was it home schooling just done independently of Fullerton? 22 schooling just done independently of Fullerton? 23 A. My morn and dad set that up. I wasn't early aware of how it all worked. 24 parents teaching you at home or was — how was that program set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home?  4 A. T can't remember for certain how that was conducted. Q. When all was said and down, how were your high school grades? Do you recall? A. They were prefty good. Q. Okay. I think you were like me. You didn't exactly excel in math? A. Yeah. Q. Okay. Let me ask you a little bit about the accident that occurred in August of 2003 in Spokane which brings us here today. I mertainly not trying to dredge up and physically at the accident. Q. Okay. What's thread at all worked. Page 38  Page 38  Page 38  Page 39  Page 40  A. T can't remember that at all. Q. Okay. Man't arrive in Spokane the first go-around? Well, when did you start your remissionary training center in usissionary training center in the missionary training center.  19 Q. Okay. And how did this — were your list as the measing and the merting center.  10 Q. Okay. Undidn't exactly excel in math? A. Yes. Q. Okay. Oyou have any recollection of the acc		that worked?		
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a livays, when you were — aside from the La Sierra High School expertence, is it your recollection that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attended leases?  A. I think there was a brief period where before going to La Sierra we tried to do home schooling.  Q. Okay. And do you recall when that was?  A. I can't say for certain — A. — when that was. Q. Okay. Was it through — was it — was it home schooling intrough Fullerton or in conjunction with Fullerton, or was it home schooling just done independently of Fullerton? A. My mom and dad set that up. I wasn't really aware of how it all worked. Q. Okay. And how did this — were your  Page 38  parents teaching you at home or was — how was that program set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home? A. I can't remember for certain how that was conducted. Q. When all was said and down, how were your high school grades? Do you recall? A. They were pretty good. Q. Okay. Lttme ask yon a little bif about the accident that occurred in August of 2003 in Spokane which brings us here today. I'm certainly not trying to dredge up any bad memories, but that's part of my — my job here.  First of all, do you have any recollection of the accident?  A. Have no recollection of what took 201 place on the date of the accident.  Q. Okay. What hat he last memory you have before the accident?  A. Have no recollection of what took 202 place on the date of the accident.  Q. Okay. What hat he last memory you have before the accident?				
that while you attended Fullerton you'd get up and physically go to — to Fullerton High School every day and attend classes?  1 A. I think there was a brief period where before going to La Sierra we tried to do home schooling.  2 Q. Okay. And do you recall when that was?  3 Q. Okay. And do you recall when that was?  4 A. I can't say for certain —  5 Q. Okay. Was it —  6 A. I can't say for certain —  7 Q. Was it —  7 Q. Was it —  8 A. — when that was.  9 Q. Okay. Was it through — was it —  10 conjunction with Fulletron, or was it home schooling just done independently of Fullerton?  23 A. My mon and dad set that up. I wasn't really aware of how it all worked.  25 Q. Okay. And how did this — were your  Page 38 that program set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home?  A. Lan't remember for certain how that was conducted.  Q. When all was said and down, how were word upon this school grades? Do you recall?  A. They were pretty good. Q. Okay. Let me ask you a little bif about the accident that occurred in August of 200 in Spokane which brings us here today.  17 any bad memories, but that's part of my — my job here.  18 A. I can't remember that at all.  Well, when did you start your — wission in Spokane the first go-around?  When did you start your — wission in Spokane the first go-around?  When did you start your — wission in Spokane the first go-around?  When did you start your — your mission in Spokane the first go-around?  When did you start your — your mission in Spokane the first go-around?  10 Q. Okay. And then after a few weeks at the training center, then you went from the training center, then you went from the training center.  1 A. Right.  2 Q. To Spokane in January of 2003 to start your mission?  1 A. Right.  2 Q. Okay. Do you have recollection of — of Spokane in January of 2003 to start your mission?  1 A. Yeah. Jon't Area weeks at the program set up when you didn't actually physically attend at Fullerton High School but w		always when you were saids from the L. G.	1 .	MR. NORDSTROM: What was the date you
day of the accident.  Q. And then you sithday was five days  before that?  A. Yeah. I don't remember that at all.  Q. Okay. Do you have any  recollection —  Well, when did you start your — your  mission in Spokane the first go-around?  When did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well, when did you start your — your  mission in Spokane the first go-around?  When did you strive in Spokane as a  recollection —  Well, when did you start your — your  mission in Spokane the first go-around?  When did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well when did you strive in Spokane as a  recollection —  Well when did you strive our  when did you strive in Spokane the first go-around?  When did you arrive in Spokane as a  recollection —  Well, when did you start your — your  mission in Spokane the first go-around?  When did you strive in Spokane as a  recollection —  Well, when did you strive in Spokane as a  recollection —  Well, when did you start your — your  mission in Spokane the first go-around?  A. I can't remember the specific date.  11		High School experience is it were at the		
and physically go to to Fullerton High School overy day and attend classes?  A. I think there was a brief period where before going to La Sierra we tried to do home schooling.  Q. Okay. And do you recall when that was?  A. I can't say for certain Q. Was it Was it home schooling through Fullerton or in conjunction with Fullerton, or was it home schooling just done independently of Fullerton?  A. My mom and dad set that up. I wasn't really aware of how it all worked.  Q. Okay. And how did this were your  Page 38  parents teaching you at home or was how was that program set up when you didn't actually yphysically attend at Fullerton High School but were undergoing the education process at home?  A. I can't remember for certain how that was conducted.  Q. Okay. Let me ask you a little bit about the accident that occurred in August of 20003 in Spokane which brings us here today.  The certainly not trying to dredge up any bad memories, but that's part of my my job here.  First of all, do you have any recollection of the accident?  A. I have no recollection of what took place on the date of the accident.  A. A chan't member that at all.  A. Yeah. I don't remember that at all.  Well, when did you start your your mission in Spokane this first go-around?  Well, when did you arrive in Spokane as a new missionary?  A. I can't remember the specific date.  11		that while you attended Evilonte and the		MR. REKOFKE: 20 August 21 was the
to every day and attend classes?  1 A. I think there was a brief period where before going to La Sierra we tried to do home schooling.  4 Q. Okay. And do you recall when that was?  A. I can't say for certain  20 Was it  20 Was it  21 conjunction with Fullerton, or was it home schooling just done independently of Fullerton?  22 schooling just done independently of Fullerton?  23 A. My mom and dad set that up. I wasn't really aware of how it all worked.  25 Q. Okay. And how did this were your  26 Page 38  1 parents teaching you at home or was how was that program set up when you didn't actually were undergoing the education process at home?  3 physically attend at Fullerton High School but were undergoing the education process at home?  4 N. Yeah. I don't remember that at all.  Well, when did you start your your mission in Spokane the first go-around?  When did you start your your mission in Spokane the first go-around?  When did you start your your mission in Spokane the first go-around?  When did you atten the specific date.  1 proported to the missionary training center in that becember  Q. Okay. And how did this were your  Page 38  Page 40  A. Right.  Q to Spokane?  A. Right.  Q to Spokane?  A. Right.  Q to Spokane?  A. Right.  Q. So were you in place  MR. NORDSTROM: Make sure he finishes his question before you answer. All right?  BYMR. REKOFKE:  Q. Okay. Do you have recollection of  of being in place as a as a new missionary in Spokane which brings us here today.  I'm certainly not trying to dredge up any bad memories, but that's part of my my job here.  First of all, do you have any recollection of the accident.  A. Yes.  Q. Okay. Why don't you tell me a little bit about the accident that occurred?  A. I have no recollection of what took place on the date of the accident.  10 Q. Okay what's the last memory you have before the accident?  A. Yes.  Q. Okay. Okay on you are all?  A. Yes.  Q. Okay. Okay on you to an indent a few weeks at the missionary train		and physically go to the Full of a Hill 1 Gill		
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Page 38  Page 38  Page 40  Page 40  parents teaching you at home or was — how was that program set up when you didn't actually physically attend at Fullerton High School but were undergoing the education process at home?  A. I can't remember for certain how that was conducted.  Q. When all was said and down, how were your high school grades? Do you recall?  A. They were pretty good.  Q. Okay. I think you were like me.  You didn't exactly excel in math?  A. Yeah.  Q. Okay. Let me ask you a little bit about the accident that occurred in August of 2003 in Spokane which brings us here today.  I'm certainly not trying to dredge up any bad memories, but that's part of my — my job here.  First of all, do you have any recollection of the accident?  A. I have no recollection of what took place on the date of the accident?  A. I have no recollection of what took place on the date of the accident?  Q. Okay. What's the last memory you have before the accident?  The activity A. A. Right.  Q. — to Spokane?  BY MR. NORDSTROM: Make sure he finishes his question before you answer. All right?  BY MR. NORDSTROM:  A. Yes.  Q. Okay. Do you whave sure pretty good.  Q. Okay. Let me ask you a little bit about the accident that occurred in August of 200 feeing in place as a — as a new missionary in Spokane in January of 2003?  Do you recall events that occurred?  A. I have no recollection of what took place on the date of the accident?  A. I have no recollection of what took place on the date of the accident?  A. I have no recollection of what took place on the date of the accident?  A. My first area was Troy, Idaho. And that's where I was trained.  Q. Do you recall about how long you were		A. My mom and dad set that up. I wasn't	23	
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	Page 97		Page 99
1	A. In the sense that it had little		
2	pockets I could put things in, that's and it	2	Q. Okay. And what under that
3	held my name tag in place. I don't know how to	3	contract, why don't you go ahead and read into
4	explain	4	the record what what you agreed to do.  A. Okay.
5	Q. I'm just talking about the little	5	
6	book.	6	Q. It says, "I Thomas Waite agreed to," and then go ahead and read those?
7	A. Right. Well, me, too. Just - this	7	A. "Obey all mission vehicle rules; wear
8	is how I found it helpful, like carrying around	8	a seatbelt at all times while the vehicle is
9	with me.	9	moving; submit all reports on time; not tamper
10	Q. Yeah.	10	with odometers; use defensive driving principles;
11	A. You could put your name tag if you	11	obey all local traffic laws; drive mission
12	only have your name tag on your shirt pocket,	12	vehicles only; not transport unauthorized people
13	it's kind of flimsy, it could come out easy. If	13	in the vehicle; only use the vehicle for approved
14	you attach it with both the book and the pocket,	14	mission business within my assigned area."
15	it's hard to come out.	15	Q. Okay. So, do you have a recollection
16	Q. So it was useful in several ways?	16	of of reading this and signing this on
17	A. Yeah.	17	January 8th?
18	Q. It had some information in it and it	18	A. No.
19	held your name tag on better?	19	Q. Okay. You understood the rules that
20	A. Yeah.	20	are that are set forth there, though?
21	Q. Okay. Is there a section, to your	21	A. I understood the rules?
22	recollection, in the missionary handbook about	22	Q. Yeah. You under
23	car safety?	23	A. I understand them.
24 25	A. I guess so.	24	Q. Okay. You understand them now,
123	Q. Okay. I'm just asking if you recall.	25	obviously?
		23	ooviously:
	Page 98	23	Page 100
1	Page 98		Page 100
- 2		1	Page 100 A. Right.
2 3	Page 98  A. Well, I know we read it, but it was		Page 100  A. Right. Q. You understood them then?
2 3 4	Page 98  A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that,	1 2	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my
2 3 4 5	Page 98  A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that, then that's a fine that's a fine answer.	1 2 3	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my current situation and then myself at that time,
2 3 4 5 6	Page 98  A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that, then that's a fine that's a fine answer.  It says what it says. 'So I'm not	1 2 3 4	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that, then that's a fine that's a fine answer.  It says what it says. 'So I'm not I'm just curious if you had any recollection.  Okay. Let me hand you Exhibit 3.  (Whereupon the document referred to was marked Defendants' Exhibit-3 by the Certified Shorthand Reporter and is attached hereto.)  BY MR. REKOFKE:  Q. And again to move this along, that across the top it says "Driving Contract."  A. Uh-huh, yes.  Q. Okay. And is that your name printed in there after the first paragraph?  A. Correct.  Q. And is that your signature at the bottom of that?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my current situation and then myself at that time, obviously not to the same degree of appreciation or Q. Okay. Do you think it's reasonable to have you agree to wear a seat belt at all times while the vehicle was moving? A. Yes. Q. And obviously if you're in the back of a truck that's moving, in the bed of the truck there's no seat belt? A. Correct. Q. Okay. You in the first go-around in the Spokane mission you were paired with Elder Ross; is that right? A. Yes. Q. Okay. A. Or in the Spokane mission? Q. The Spokane mission, yes. A. Oh, in my first area with my trainer?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that, then that's a fine — that's a fine answer.  It says what it says. 'So I'm not — I'm just curious if you had any recollection.  Okay. Let me hand you Exhibit 3.  (Whereupon the document referred to was marked Defendants' Exhibit-3 by the Certified Shorthand Reporter and is attached hereto.)  BY MR. REKOFKE:  Q. And again to move this along, that across the top it says "Driving Contract."  A. Uh-huh, yes.  Q. Okay. And is that your name printed in there after the first paragraph?  A. Correct.  Q. And is that your signature at the bottom of that?  A. Affirmative.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my current situation and then myself at that time, obviously not to the same degree of appreciation or Q. Okay. Do you think it's reasonable to have you agree to wear a seat belt at all times while the vehicle was moving? A. Yes. Q. And obviously if you're in the back of a truck that's moving, in the bed of the truck there's no seat belt? A. Correct. Q. Okay. You in the first go-around in the Spokane mission you were paired with Elder Ross; is that right? A. Yes. Q. Okay. A. Or in the Spokane mission? Q. The Spokane mission, yes. A. Oh, in my first area with my trainer? Q. Yeah. Let me walk through it?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Well, I know we read it, but it was just kind of a routine thing.  Q. Okay. And that's right. If you don't have any specific recollection of that, then that's a fine that's a fine answer.  It says what it says. 'So I'm not I'm just curious if you had any recollection.  Okay. Let me hand you Exhibit 3.  (Whereupon the document referred to was marked Defendants' Exhibit-3 by the Certified Shorthand Reporter and is attached hereto.)  BY MR. REKOFKE:  Q. And again to move this along, that across the top it says "Driving Contract."  A. Uh-huh, yes.  Q. Okay. And is that your name printed in there after the first paragraph?  A. Correct.  Q. And is that your signature at the bottom of that?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 100  A. Right. Q. You understood them then? A. I'm sure I read them, but given my current situation and then myself at that time, obviously not to the same degree of appreciation or Q. Okay. Do you think it's reasonable to have you agree to wear a seat belt at all times while the vehicle was moving? A. Yes. Q. And obviously if you're in the back of a truck that's moving, in the bed of the truck there's no seat belt? A. Correct. Q. Okay. You in the first go-around in the Spokane mission you were paired with Elder Ross; is that right? A. Yes. Q. Okay. A. Or in the Spokane mission? Q. The Spokane mission, yes. A. Oh, in my first area with my trainer?

21 (Pages 97 to 100)

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## DRIVING CONTRACT

In exchange for the privilege of being allowed to drive or ride in a mission-owned car while serving in the Washington Spokane Mission,

I, THOMAS

WATE

(PRINT NAME HERE)

agree to:

- a. Obey all mission vehicle rules.
- b. Wear a seat belt at all times while the vehicle is moving.
- c. Submit all reports on time.
- d. Not tamper with odometers.
- e. Use defensive driving principles.
- f. Obey all local traffic laws.
- g. Drive mission vehicles only.
- h. *Not* transport unauthorized people in the vehicle.
- i. Only use the vehicle for approved mission business within my assigned area.

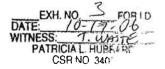
Signed:

Date:

2: 8 JAN 2003

WASHINGTON SPOKANE MISSION

1 JANUARY 2000



# Exhibit "C"

## CONDENSED TRANSCRIPT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

THOMAS A. WAITE,

Plaintiff,

VS.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS dba CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation, dba CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and STEVEN D. BRODHEAD,

Defendants.

: No. CF-05-399-EFS

Videotaped Deposition of:

DONALD C. FOSSUM



November 9, 2006 - 1:08 p.m.

Location: Kirton & McConkie 1800 Eagle Gate Tower 60 East South Temple Salt Lake City, Utah 84111

Reporter: Teri Hansen Cronenwett Certified Realtime Reporter, Registered Merit Reporter Notary Public in and for the State of Utah



36 South State Street • Suite 1220 • Salt Lake City, UT 84111 • 801.538.2333 • Fax 801.538.2334

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actions.

- A. That's correct.
  - O. How often before this time?
- 3 A. I don't know. I didn't keep track.
  - Q. All right. Every time you had a district meeting?
  - A. Not every time. It all depended on their schedule and what they wanted to do and everything.
- 7 Q. All right. But you had -- had you ever carried 8 more than six in a pickup before?
  - A. I believe so, yes.
- 10 Q. All right. And would the number more than six or
- 11 more than four all be in the bed of the pickup?
  - A. It just depended on size.
- 13 Q. Well, did you put anybody more than four in the cab 14 of the pickup?
  - A. We have, but those were three smaller gentlemen.
- 16 Q. Okay. But this is the pickup you are driving now
- 17 in Spokane, correct?
  - A. That's correct.
- 19 Q. And how many seatbelts are in the front of the
- 20 Dakota that you were driving?
- 21 A. I don't know.
- 22 Q. Did it have bucket seats or a bench seat?
- 23 A. It's a good question.
- 24 Q. And again, I'm talking about your driver's seat and
- 25 the passenger seat. Were those bucket seats, or was that a

- to the president, and it was basically, you know, if we get 1 2
  - caught, we're going to get in trouble. But that was about
- 3 it.

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- Q. And was that before August of 2003?
- A. I believe so.
- Q. Was -- could it have been after 2003? I mean,
- 7 after August of 2003?
  - A. I believe it was before the accident.
  - Q. Okay. Do you know that as you sit here?
    - A. Do I know it? No. That's why I said I believe.
  - Q. Okay. What's the basis for that belief?
- 12 A. Because it wouldn't make sense for them to tell me 13 after because the pickup was nonexistent after that.
- 14 Q. Okay. So you may have had an assistant to the 15 president sometime tell you specifically you could get in
- 16 trouble by carrying somebody in the bed of the pickup?
- 17 A. That's correct.
  - Q. Okay. Did you pass that information on to any one
- 19 of the elders who rode in the bed the pickup? 20
  - A. We all knew it, sir.
- 21 Q. Can you tell me, so did -- strike this. Was
- 22 anybody present with you when the assistants told you that? 23
  - A. I don't remember.
- 24 Q. Well, can you tell me how you knew that everybody
- 25 knew that they weren't to ride in the bed of the pickup?

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- bench seat?
- A. I don't recall.
  - Q. Okay. Was it a stick or automatic?
  - A. Automatic.
- 5 Q. All right. The back seat, do you know whether it
- 6 had more than two seatbelts available?
  - A. I don't know. I never got back there.
  - Q. As the designated driver, what were your responsibility -- any -- did you have any responsibility
- 9 10 regarding seatbelts?
- 11 A. I had the responsibility to wear my own and also to 12 encourage others to wear theirs, but as 18, 19, 20-year-old 13 men, I figured that we could all be responsible for our own
- 15 Q. And that's the way you felt when you were back in 16 June, July and August of 2003?
  - A. They were adults, correct?
- 18 Q. Well, I guess I am asking you the question, though.
- 19 Is that the way you felt back then?
- 20 A. Yes, sir. They were adults. They had
- responsibility over themselves, and they could make their 21
- 22 decision whether they wanted to wear it or not.
- 23 Q. Had anybody, anyone in the mission field, advised 24 you not to carry missionaries in the bed of a pickup?
  - A. It was mentioned once in passing from an assistant

- A. Because we all signed a document that said we would wear our seatbelts.
- 2 3 Q. And that's why they knew they weren't supposed to
- 4 be in the bed. Is that what you're telling me?
  - A. That's what I would assume.
  - Q. Okay. So you're telling me this was an assumption
- on your part that everybody else knew. Is that correct?
  - A. They all signed a document, so I feel it's a pretty safe assumption, sir.
- 10 Q. I understand, but that's what you -- but you're
- saying you assumed that they knew, correct? 11
- A. Well, I guess they did know because they signed the 12 document. So no, I am not saying they -- I am assuming. I 13
- 14 guess I am saying I know.
- 15 Q. Okay. So you know that they signed a document?
- 16 A. That's correct.
- 17 Q. Did that document indicate they would not ride in a
- 18 bed of a pickup?
- 19 A. No. It said they would wear their seatbelt at all 20 times when in a vehicle.
- 21 Q. All right. Let me show you what's going to be
- 22 marked as Exhibit 1.
- 23 (Deposition Exhibit No. 1 was marked.)
- 24 Q. (By Mr. Nordstrom) Do you recognize this document?
  - A. Yes, sir.

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- Q. Okay. What's it called?
  - A. Driving contract.
  - Q. Would you read the first sentence for me, please.
- A. "In exchange for the privilege of being allowed to drive or ride in a mission-owned car while serving in the Washington Spokane mission."
- 7 Q. Okay. Then it says, I, and do you remember 8 printing your name there?
  - A. Yes, sir.
- 10 Okay. And at the very beginning it says 11 mission-owned car. Is that correct?
  - A. That's correct.
  - Q. All right. At any place does it say pickup?
- 14 A. Nope, it doesn't.
- 15 Q. Okay. Then it changes, and under -- where -- and 16 show me where it says that you wear a seatbelt.
  - A. That would be B.
- 18 Q. Would you read that one, please.
- 19 A. "Wear a seatbelt at all times while the vehicle is 20 moving."
- 21 Q. Okay. So the contract heads out starting a car, 22 correct, and then we have wear a seatbelt, right, the vehicle 23 is moving, correct?
- 24 A. Yes, sir, but also I do believe that most people 25 would consider a pickup a car because we don't very often

1 Missionaries should.

- A. I believe it might have been talked about in a zone meeting.
- Q. Okay. Does it refer any place on that document that you have looked over to pickups?
- A. It says driving other vehicles, so vehicle would 7 assume a pickup. Again, vehicle. Again, it refers to vehicle down underneath both missionaries share the responsibility and, again, it says, stand outside the 10
  - Q. I understand. If you could just look. Do you see any place that refers to pickups?
    - A. Well ---

14 MR. REKOFKE: He's answering the question, so go 15 ahead and answer.

- 16 A. That's -- I mean, a pickup is a vehicle, so therefore, yes, it does refer to a pickup as well as a car. 17
- 18 Q. (By Mr. Nordstrom) Does that have that language in 19 there that you have just referred to? Doesn't it say on the 20 document -- and I just want to make sure I'm clear. It says, 21 "Always wear seatbelts and never have more people in the car 22

than there are seatbelts." Does it mention pickup anywhere? MR. REKOFKE: In that sentence?

Q. (By Mr. Nordstrom) In any sentence on that 25 document, does it mention pickup anywhere?

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#### make that distinction.

- Q. I will move to strike, nonresponsive on that. Let me just make sure I understand, though. Have you ever had any specific conversation with any other missionary on what -- how they interpreted this document?
  - A. No, sir.
- Q. And so everything you are talking about is an assumption on your part regarding other missionaries riding 9 in that pickup, correct?
  - A. That's correct.
    - VIDEOGRAPHER: Ten minutes, Counsel.
- 12 Q. (By Mr. Nordstrom) Show you what's marked -- would 13 you mark that as two?
  - (Deposition Exhibit No. 2 was marked.)
  - Q. (By Mr. Nordstrom) Showing you what's been marked as Exhibit 2, do you ever recall seeing that document?
    - A. What was the question again?
  - Q. Do you recall ever seeing this document before?
- 19 A. No, I don't.
- 20 Q. It indicates in this document, "Missionaries should 21 always wear seatbelts and never have more people in the car 22 than there are seatbelts for." As a designated driver, were 23 you ever given that instruction?
  - A. Where is that?
    - Q. It's about midway in the document. It says:

MR. REKOFKE: Objection, asked and answered, but go ahead and answer it again.

- A. Again, vehicle is assuming anything that moves with four wheels.
- 5 Q. (By Mr. Nordstrom) Just a minute. I'll move to strike as nonresponsive. My question again is, can you see 6 the word pickup listed anywhere on that document, Elder 8 Ross -- I mean, Elder Fossum?
- 9 MR. REKOFKE: Objection. I think if you want to 10 ask him what he understands the document, he is telling you 11 that. If you want him to ask, does the word pickup say that? 12 I think those are two different questions. That's my 13 objection.
- 14 Q. (By Mr. Nordstrom) Yeah. Well, I think I asked the question, do you see the word pickup referenced any place on 15 16 this document?
  - A. Those specific words, no.
- 18 Q. Okay. Thank you.
- 19 VIDEOGRAPHER: Five minutes, Counsel.
- 20 Q. (By Mr. Nordstrom) I just want to go over the 21 first paragraph again. It says driving other vehicles. Have 22 you got it there?
  - A. Yep.
- 24 Q. Second paragraph, you can only drive vehicles 25 assigned to him. Is that the missionaries, correct?

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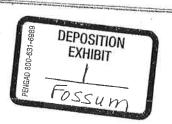
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Case 2:05-cv-00399-EFS Document 53 Filed 01/30/2007 DRIVING CONTRACT In exchange for the privilege of being allowed to drive or ride in a mission-owned car while serving in the Washington Spokane Mission, (PRINT NAME HERE) agree to: a. Obey all mission vehicle rules. b. Wear a seat helt at all times while the vehicle is moving. c. Submit all reports on time. d. Not tamper with odometers. e. Use defensive driving principles. f. Obey all local traffic laws. g. Drive mission vehicles only. h. Not transport unauthorized people in the vehicle. i. Only use the vehicle for approved mission business within my assigned area. Signed:

T

Date:

Washington Spokane Mission



1 JANUARY 2000

## Exhibit "D"

 )

DECLARATION OF JAMES T. ROSS

()

I, James T. Ross, under the penalty of perjury of the laws of the State of Washington, hereby declare and state:

That I was a missionary for the Church of Jesus Christ of Latter Day Saints from May of 2002 to May of 2004 at which time I received a honorable release. I served in the Spokane, Washington mission and held the positions of Senior Companion, Trainer, District Leader, Zone Leader, and Assistant to the President.

On or about August 21, 2003 I was involved in a motor vehicle collision with six other Elders including my companion, Elder Thomas Waite. At that time I was also a Zone Leader as well as Elder Waite's Senior Companion. Elder Waite and I had been companions for approximately two weeks. That morning Elder Donald Fossum and Elder Cesar Porras, the Elders to which the 2003 Dakota pickup was assigned, picked us up for either a zone or district

DECLARATION OF JAMES T. ROSS - 1

NORDSTROM & NEES, P.S. ATTORNEYS AT LAW

323 South Pines Road Spokane Valley, Washington 99206

meeting. We were the last Elders to be picked up and since there were already four Elders sitting inside the cab of the pickup (two in the front seat, two in the extended cab seats), Elder Waite and I climbed into the bed of the canopied pickup. I, as well as other Elders had frequently ridden in the bed of the pickup and did so to most weekly district meetings unless another ride was available. Following the meeting we stopped off at the Subway restaurant on 32<sup>nd</sup> Avenue. After lunch Elder Fossum, Elder Porras, Elder Hansen and I got into the cab of the pickup, and Elder Ryan and Elder Waite who came out of the restaurant last, climbed into the bed.

I had been in this particular area for approximately eight weeks, living at the same apartment and was familiar with the route down Adams Road and the four-way stop at the intersection of 8th Avenue. On the day of the collision I was in the front passenger seat and Elder Fossum was driving the pickup. Elders Porras and Hansen were in the back seat. I recall specifically that Elder Fossum stopped at the stop sign on Adams Road. There is a big pine tree which blocks our view to the west on 8th and I was unable to see any car approaching from that direction until we began moving forward pass the stop sign. I am not sure exactly where the pickup was in relation to the intersection but the next thing I recall is hearing the screeching of tires. I then looked and saw a vehicle traveling at a high rate of speed coming towards us down 8th Avenue. I then pointed my finger toward the speeding car to get Elder Fossum's attention and yelled "oh crap". Elder Fossum looked and saw the car coming and responded by pushing the accelerator to the floor. The next thing I knew the car hit the side of the pickup knocking us approximately 180 degrees.

After the pickup stopped I looked in the rear and saw that the canopy and both Elder Ryan and Elder Waite were missing. I exited the pickup and found both Elder Ryan and Elder Waite lying on the pavement. Elder Waite was not only unconscious but he was not breathing. He also had blood coming from his nose and ears. Elder Waite finally began to breathe and at some point in time I recall the ambulance arriving.

I do not recall any actual conversations with anyone although I know that I did talk with the other Elders. We did kneel down and say a prayer for Elder Waite and Elder Ryan and also called President Ludlow to inform him what had happened.

DECLARATION OF JAMES T. ROSS - 2

(509) 924-9800 Fax (509) 924-9923

# Exhibit "E"

Page 1

UNITED STATES JUDICIAL DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

\* \* \*

THOMAS A. WAITE,

Plaintiff,

) CIVIL NO. CV-05-399-EFS

vs.

) VIDEO DEPOSITION OF:

THE CHURCH OF JESUS CHRIST ) MARK TYLER RYAN OF LATTER DAY SAINTS, dba CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, dba CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and STEVEN D. BRODHEAD,

Defendants.

November 10, 2006 10:11 a.m.

Offices of Kirton & McConkie 60 East South Temple, Suite 1800 . Salt Lake City, Utah

RENEE L. STACY Registered Professional Reporter

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Page 10 stuff, but, like, it's been four and a half years since I was in the MTC, and right now I don't recall at the actual Missionary Training Center, but before we entered in our normal mission, we were trained in safety habits.

Q Would this be first aid-type safety in addition to other types of safety?

A I really don't remember. I really don't remember.

Q That brings up a good point. In this accident, did you suffer an injury? And I'm speaking of the accident that occurred where the Honda hit the vehicle that was being driven by Mr. Fossum?

Was I injured? Yes.

And can you just tell us briefly what the nature of your injuries were?

A Just -- I had a major concussion, bleeding. My head was bleeding. I lost a lot of my hair. Just scratches, like, I just have -- you know, I have little scars on my body. I still have them. They're -- nothing major happened. I was not major injured. No major injuries, like no...

Q At some point in time during this impact or immediately after impact, were you unconscious?

Yes.

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1 what you did in training or what you did as a missionary prior to this accident. 2 3

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Α No.

Q What is the -- and just to -- so, to put 4 5 this in perspective, what is the last thing you 6 remember prior to the impact of the vehicles? 7

Just the car -- the screeching tires.

Q Okay. So you remember that?

9 A Yeah.

Q All right.

11. A I even remember where Elder Waite was sitting, as opposed to where I was sitting, in the 12 13 back of the pickup truck.

Q Okay. Well --

How I was sitting.

Since you've mentioned that, why don't you tell us where you remember him sitting -- Elder Waite was sitting and where you were sitting. And this is in the bed of the vehicle, correct?

A Yes. If I remember right, we were facing north, and I was on the left side of the car, and I  $\,$ was sitting against the wheel well that got hit. My arms were like this. I just remember being spread out. And Elder Waite was to my right, facing me, and his arm was on the -- his arm was on the gate, his

Page 11

Q Okay. Your answer to that was "yes"?

Α Yes.

And do you know how long you might have Q been unconscious?

A I have no clue of the time frame. I would assume under five minutes.

Q When you woke up, can you tell us where you were, if you remember?

A I -- I recall -- I do recall, like, being out of breath. I can't tell you where I was at. I was obviously on the road. I was crawling, and then I remember passing out, and then I woke up a second time and I was just -- I was on my -- the left side of my face, that I remember, and my head was on the curb, and kind of -- well, kind of in the grass, but my body was on the curb, and I just was covered in blood, and I remember Elder Hansen - I can't remember Elder -- Dillon Hansen was waving his hands and trying to get me, you know, to wake up. Other than that...

Q Okay. And I'll cover a little bit more of that later. I'm wondering, do you think -- except for that which you cannot remember, do you think any of your memory has been affected by this particular accident? In other words, your ability to remember

Page 13 left arm was on the gate and he was leaning.

We were talking. I don't recall what we were talking about.

Q Was the gate up?

A The gate was up. Everything -- the gate was up and the window was closed.

Q And the canopy was on the vehicle?

A Until my head took it off, yes.

Q And do you remember -- do you -- you said you remember sitting in the vehicle and hearing screeching tires. Do you remember actually hitting the canopy?

A You know what? I don't. All I -- to my recollection, I only remember the screeching tires. The next thing I know is I'm on the side of the road.

Q I take it from that particular answer that you do not remember anything about the trajectory or where Mr. Waite went.

A No. No. I was not -- from what I know, I wasn't conscious when it happened.

Q Do you know in what manner the canopy was attached or bolted down to the pickup?

23 A It was clamped. It had clamps on it, and 24 the clamps --25

Q Had you ever been involved with that

# Exhibit "F"

2208 WEST SECOND AVENUE • SPOKANE, WA 99201-5417 TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

1 2 3	RICHARD C. EYMANN Eymann Allison Hunter Jones, P.S. 2208 West Second Avenue Spokane, WA 99201-5417 (509) 747-0101		
<ul><li>4</li><li>5</li><li>6</li></ul>	STEPHEN L. NORDSTROM Nordstrom & Nees, P.S. 323 South Pines Road Spokane, WA 99206 (509) 924-9800	g (a)	
7	Attorneys for Plaintiff		
8	UNITED STATES DISTR	ICT COURT FOR THE	
9	EASTERN DISTRICT	OF WASHINGTON	
10	THOMAS A. WAITE,	No. CV-05-399-EFS	
11 12	Plaintiff, vs.	ORDER GRANTING PLAINTIFF'S MOTION FOR	
13 14 15 16 17	THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS d/b/a CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation, d/b/a CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM;	PARTIAL SUMMARY JUDGMENT RE: AFFIRMATIVE DEFENSES	
18	and STEVEN D. BRODHEAD,		
19	Defendants.		
20	The Court, having reviewed and considered plaintiff's Motion for Partia		
21	Summary Judgment Re: Affirmative Defenses, and good cause being shown, now		
22	therefore,		
23	IT IS HEREBY ORDERED:		
24	Plaintiff's Motion for Partial Summa	ry Judgment Re: Affirmative Defenses is	
25	GRANTED.		
26		Eymann Allison Hunter Jones P.S.	
27	ORDER GRANTING PLAINTIFF 'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE:	2208 WEST SECOND AVENUE SPOKANE, WA 99201-5417	

AFFIRMATIVE DEFENSES - 1 (order on mot for psj re affirmative defenses.wpd)

1	DONE IN OPEN COURT this day of, 2007	7.
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3		
4	HONORABLE EDWARD F. SHEA	
5	U.S. District Court Judge	
6	Presented by:	
7	EYMANN ALLISON HUNTER JONES, P.S.	
8	BY: s/Richard C. Eymann	
9	BY: s/Richard C. Eymann RICHARD C. EYMANN, WSBA #7470 Co-counsel for Plaintiff	
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27   27	ORDER GRANTING PLAINTIFF'S MOTION FOR  EYMANN ALLISON HUNTER JONES P.S.	